

HOUSE BILL 795

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2000 Regular Session  
0lr2798  
CF 0lr0700

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By: **Delegate Finifter**

Introduced and read first time: February 11, 2000

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Powers of Attorney**

3 FOR the purpose of establishing certain requirements for the execution of a durable  
4 power of attorney; requiring certain durable powers of attorney to include a  
5 certain notice and to specify certain duties of the agent or attorney in fact;  
6 providing that an attorney in fact or agent under a power of attorney who  
7 commits certain acts is guilty of embezzlement and subject to certain criminal  
8 penalties; defining a certain term; providing for the application of this Act; and  
9 generally relating to powers of attorney.

10 BY renumbering

11 Article - Estates and Trusts  
12 Section 13-602 and 13-603, respectively  
13 to be Section 13-605 and 13-606, respectively  
14 Annotated Code of Maryland  
15 (1991 Replacement Volume and 1999 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article 27 - Crimes and Punishments  
18 Section 132  
19 Annotated Code of Maryland  
20 (1996 Replacement Volume and 1999 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article - Estates and Trusts  
23 Section 13-601  
24 Annotated Code of Maryland  
25 (1991 Replacement Volume and 1999 Supplement)

26 BY adding to

27 Article - Estates and Trusts  
28 Section 13-601, 13-603, and 13-604  
29 Annotated Code of Maryland

1 (1991 Replacement Volume and 1999 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
3 MARYLAND, That Section(s) 13-602 and 13-603, respectively, of Article - Estates  
4 and Trusts of the Annotated Code of Maryland be renumbered to be Section(s) 13-605  
5 and 13-606, respectively.

6 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
7 read as follows:

8 **Article 27 - Crimes and Punishments**

9 132.

10 If any executor, administrator, guardian, committee, trustee, receiver,  
11 ATTORNEY IN FACT OR AGENT UNDER A POWER OF ATTORNEY, or any fiduciary shall  
12 fraudulently and wilfully appropriate to any use and purpose not in the due and  
13 lawful execution of his trust, any money or any other thing of value which may come  
14 into his hands as such executor, administrator, guardian, committee, trustee, receiver,  
15 ATTORNEY IN FACT OR AGENT UNDER A POWER OF ATTORNEY, or in any other  
16 fiduciary capacity, or secrete it with a fraudulent intent to appropriate it to such use  
17 or purpose, he shall be deemed guilty of embezzlement, and shall be punished upon  
18 conviction by imprisonment in the penitentiary for not less than one year nor more  
19 than five years.

20 **Article - Estates and Trusts**

21 13-601.

22 IN THIS SUBTITLE, "DURABLE POWER OF ATTORNEY" MEANS A POWER OF  
23 ATTORNEY BY WHICH A PRINCIPAL DESIGNATES ANOTHER AS AN ATTORNEY IN FACT  
24 OR AGENT AND THE AUTHORITY IS EXERCISABLE NOTWITHSTANDING THE  
25 PRINCIPAL'S SUBSEQUENT DISABILITY OR INCAPACITY.

26 [13-601.] 13-602.

27 (a) [In this section, "durable power of attorney" means a power of attorney by  
28 which a principal designates another as an attorney in fact or agent and the authority  
29 is exercisable notwithstanding the principal's subsequent disability or incapacity.

30 (b) Except as provided in subsection [(e)] (D) of this section, when a principal  
31 designates another as an attorney in fact or agent by a power of attorney in writing,  
32 it is a durable power of attorney unless otherwise provided by its terms.

33 [(c)] (B) Any act done by the attorney in fact or agent pursuant to the power  
34 during any period of disability or incompetence or uncertainty as to whether the  
35 principal is dead or alive has the same effect and inures to the benefit of and binds the  
36 principal as if the principal were alive, competent, and not disabled.

1 [(d)] (C) If a guardian is appointed for the principal, the attorney in fact or  
2 agent shall account to the guardian rather than the principal. The guardian has the  
3 same power the principal would have but for his disability or incompetence to revoke,  
4 suspend, or terminate all or any part of the power of attorney or agency.

5 [(e)] (D) (1) This section does not apply to an instrument or portion of an  
6 instrument that is an advance directive appointing a health care agent under Title 5,  
7 Subtitle 6 of the Health - General Article.

8 (2) An instrument or portion of an instrument that is an advance  
9 directive appointing a health care agent is subject to the provisions of Title 5, Subtitle  
10 6 of the Health - General Article.

11 13-603.

12 A DURABLE POWER OF ATTORNEY SHALL BE ACKNOWLEDGED BEFORE A  
13 NOTARY PUBLIC.

14 13-604.

15 (A) THIS SECTION DOES NOT APPLY TO A DURABLE POWER OF ATTORNEY  
16 PREPARED BY:

17 (1) A LAWYER;

18 (2) A FINANCIAL INSTITUTION; OR

19 (3) A BROKER-DEALER, AGENT, OR FEDERAL-COVERED ADVISER, AS  
20 DEFINED IN § 11-101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

21 (B) EACH PREPRINTED DURABLE POWER OF ATTORNEY FORM SOLD OR  
22 DISTRIBUTED IN THE STATE SHALL INCLUDE THE FOLLOWING NOTICE IN 10-POINT  
23 BOLDFACE TYPE:

24 "NOTICE

25 BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW SEVERAL IMPORTANT  
26 FACTS. THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON WHOM  
27 YOU DESIGNATE (YOUR AGENT, ALSO KNOWN AS YOUR ATTORNEY IN FACT) BROAD  
28 POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE BANK ACCOUNTS AND  
29 REAL OR PERSONAL PROPERTY, WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL  
30 BY YOU.

31 THESE POWERS CONTINUE TO EXIST EVEN IF YOU BECOME MENTALLY OR  
32 PHYSICALLY DISABLED OR INCAPACITATED, UNLESS YOU STRIKE THAT PROVISION  
33 IN THIS DOCUMENT.

34 SHOULD YOU WISH TO APPOINT THE SAME PERSON WHOM YOU DESIGNATE IN  
35 THIS DOCUMENT OR ANY OTHER PERSON AS YOUR AGENT TO MAKE FUTURE HEALTH

1 CARE DECISIONS ON YOUR BEHALF, YOU SHOULD USE A SEPARATE DOCUMENT TO  
2 MAKE THAT APPOINTMENT.

3 IF THERE IS ANYTHING ABOUT THIS DOCUMENT THAT YOU DO NOT  
4 UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU."

5 (C) EACH PREPRINTED DURABLE POWER OF ATTORNEY FORM SOLD OR  
6 DISTRIBUTED IN THE STATE SHALL SPECIFY THE FOLLOWING DUTIES OF THE AGENT  
7 OR ATTORNEY IN FACT:

8 (1) THE DUTY TO USE THE PRINCIPAL'S INCOME AND ASSETS FOR THE  
9 PRINCIPAL'S BENEFIT ONLY, UNLESS THE POWER OF ATTORNEY EXPRESSLY  
10 PROVIDES OTHERWISE;

11 (2) THE DUTY TO KEEP COMPLETE RECORDS OF ALL TRANSACTIONS  
12 CONDUCTED ON BEHALF OF THE PRINCIPAL; AND

13 (3) THE DUTY TO FULLY DISCLOSE, UPON REQUEST, THE RECORDS  
14 REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION TO THE PRINCIPAL OR TO  
15 THE PRINCIPAL'S GUARDIAN IF ONE IS APPOINTED BY A COURT.

16 SECTION 3. AND BE IT FURTHER ENACTED, That Section 13-603 of the  
17 Estates and Trusts Article as enacted by this Act shall apply to any durable power of  
18 attorney executed in the State on or after October 1, 2000.

19 SECTION 4. AND BE IT FURTHER ENACTED, That Section 13-604 of the  
20 Estates and Trusts Article as enacted by this Act shall apply to any preprinted  
21 durable power of attorney form sold or distributed in the State on or after October 1,  
22 2000.

23 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall be  
24 construed only prospectively and may not be applied or interpreted to have any effect  
25 on or application to any power of attorney executed before the effective date of this  
26 Act.

27 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2000.